and delivered wheat after banking hours, receiving a check which was dishonored when he presented it on his next visit to town about two weeks later. Meanwhile the buyer became insolvent and the defendant attached the wheat. The check would have been paid if presented before the insolvency, although the buyer had no deposit. In an action for conversion the plaintiff had a verdict and judgment. *Held*, that the judgment is not against the evidence. *People's State Bank of Michigan Valley* v. *Brown*, 103 Pac. 102 (Kan.).

It is well settled that delivery of the goods by the seller under an agreement for a cash sale may constitute a waiver of the condition of payment and pass title to the buyer. *Globe Milling Co.* v. *Minnesota Elevator Co.*, 44 Minn. 153. The generally accepted rule is that such a waiver depends upon the intention of the seller as determined by the jury. *Goslen* v. *Campbell*, 88 Me. 450. Some courts treat unrestricted delivery as *prima facie* evidence of an intention to waive cash payment. *Smith* v. *Lynes*, 5 N. Y. 41. Others have held that such a delivery should be conclusive evidence of a waiver. *Upton* v. *Sturbridge Cotton Mills*, 111 Mass. 446. See WILLISTON, SALES, § 346. Logically this rule is correct, for delivery without payment is obviously inconsistent with a cash sale. Applying this rule to the facts of the principal case there was either an absolute delivery on credit or a conditional sale. If the former, an action for conversion would not lie. If a conditional sale, it would be void against creditors of the buyer because unrecorded. GEN. STAT. KAN. (1897), c. 120, § 13. Even under the generally accepted rule the decision seems an extreme one, for the authorities require that the seller shall assert his right to the goods within a "reasonable time." *Smith* v. *Dennie*, 23 Mass. 262.

SPECIFIC PERFORMANCE — LEGAL CONSEQUENCES OF RIGHT OF SPECIFIC PERFORMANCE — RIGHT OF PERSONAL REPRESENTATIVE TO PURCHASE MONEY IN OPTION TO PURCHASE. — A leased land to B, giving him an option to purchase at any time within five years on notifying A or "his legal representative," and tendering to A or "his legal representative" the agreed price. A died intestate. B tendered the price to the administrator of A. *Held*, that this is a proper tender, the heirs of A having no rights in the money. *Rockland-Rockport Lime Co.* v. *Leary*, 117 N. Y. Supp. 405 (Sup. Ct., App. Div.).

The administrator's right to the purchase price on a contract made by the intestate flows from the descent to the personal representative of the vendor's right of action for the price. *Moore* v. *Burrows*, 34 Barb. (N. Y.) 173. In the case of an unexercised option, since there is no obligation, no right should descend to the personal representative. The case of a mortgage conveying title without a mortgage debt is analogous. The executor has no claim on what is paid to redeem, as the decedent had no cause of action against the mortgagor. *Turner* v. *Crane*, 1 Vern. 170. See *Smith* v. *Smoult*, 1 Ch. Cas. 88; *Thornborough* v. *Baker*, 3 Swanst. 628. The result should be the same where land descends subject to an option to purchase. *Smith* v. *Lowenstein*, 50 Oh. St. 346; *Re Walker's Estate*, 17 Jur. 706. The principal case, however, represents the prevailing rule both in England and in this country. *In re Isaacs*, [1894] 3 Ch. 506; *Newport Water Works* v. *Sisson*, 18 R. I. 411. The doctrine that the acceptance of an option relates back so as to convert the realty into personalty from the time of giving the option has been confined in England to a dispute between claimants under the vendor, so that where he option is exercised after a destruction of the premises by fire, the vendee is not entitled to the insurance. *Edwards* v. *West*, 7 Ch. D. 858. *Contra*, *Williams* v. *Lilley*, 67 Conn. 50; *People's St. R'y Co.* v. *Spencer*, 156 Pa. St. 85.

TRUSTS — POWERS AND OBLIGATIONS OF TRUSTEES — WHO MAY EXECUTE TRUST AFTER DEATH OF TRUSTEE. — Money was left to an administrator to pay the income to the testator's sister for life, and authorizing him to use any part of the principal for her support, if in his judgment it should be necessary. A subse-

quent trustee, appointed by the court under statutory authority, sought to exercise the power of using part of the principal. *Held*, that he cannot do so. *Whitaker* v. *McDowell*, 72 Atl. 938 (Conn.). See NOTES, p. 59.

WAGERING CONTRACTS — RECOVERY OF MONEY LENT FOR GAMBLING. — The plaintiff lent money to the defendant's testator knowing that it might be used in gambling. The money was lent and so used in a jurisdiction where gambling was not illegal. *Held*, that the plaintiff can recover. *Saxby* v. *Fulton*, 25 T. L. R. 446 (Eng., Ct. App., Mch. 25, 1909).

This decision affirms that of the King's Bench Division discussed in 22 HARV. L. REV. 65.

WILLS — SPECIFIC BEQUESTS — EXPENSE OF MAINTENANCE BEFORE DISTRIBUTION. — The testator bequeathed certain specific legacies. Expense was incurred in their care and maintenance pending the settlement of the estate. *Held*, that the specific legatee, and not the residuary estate, must pay the expenses of the up keep. *In re Pearce*, [1909] 1 Ch. D. 819.

A specific legacy is considered as separated from the general estate and appropriated from the date of the testator's death. See *Isenhart* v. *Brown*, 2 Edw. Ch. (N. Y.) 341, 347. Upon the assent of the executor, the rights of the specific legatee date back to that time. See *Saunders' Case*, 5 Coke, 12 b. He is accordingly entitled to all accretions or profits added in the interim; for example, the dividends on stock, or the young of animals. See *Isenhart* v. *Brown*, *supra*. On the other hand, any deficiency in the specific legacy must be borne by him, and will not be made up from the residuary estate. *Sleech* v. *Thonington*, 2 Ves. 563. Owing to an utter dearth of direct authority on the issue before the court in the principal case, the matter of expense was held to be the converse of profits arising *ad interim*, and the question was decided entirely on principle. The result seems eminently sound, for since the specific legatee gets all benefits accruing within this period, he should bear the burdens as well.

BOOK REVIEWS.

THE LAW GOVERNING SALES OF GOODS AT COMMON LAW AND UNDER THE UNIFORM SALES ACT. By Samuel Williston. New York: Baker, Voorhis and Company. 1909. pp. cix, 1314.

This is a thorough and admirable piece of work. To its production the author brought an unusual equipment. He had taught the subject of Sales of Goods for many years in Harvard Law School; he had published a scholarly collection of cases on this topic, and he had drafted and redrafted, explained and championed the statute now known as the Uniform Sales Act. No member of the American Bar possesses qualifications for authorship in this branch of the law superior to those of Professor Williston. It is safe to predict that no better treatise on Sales of Goods, than the one before us, will be offered to the public soon.

As indicated by the title, this book is not a mere commentary on the Uniform Sales Act. Indeed, such commentary forms but a small part of the work. The larger and more valuable part is devoted to a statement of the common law rules governing the subject. It is here that the author displays his powers of exposition at their best, and justifies the high regard in which he is held, as a teacher, by the growing multitude of lawyers who have had the good fortune to be his pupils. Possibly, busy and experienced practitioners may chafe at times, under the curb put upon their impetuous search for the existing rule of law upon a given point, by the author's careful and painstaking review of conflicting decisions; but it is probably safe to assert that even they will be benefited by his elucidation of the